



DEPARTMENT OF TRANSPORTATION

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Federal Highway Administration

[FHWA Docket no. FHWA-2017-0018]

Transportation Asset Management Plan Development Processes Certification and Recertification Guidance; Transportation Asset Management Plan Consistency Determination Interim Guidance

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA is finalizing one guidance document and issuing one interim guidance document: Transportation Asset Management Plan Development Processes Certification and Recertification Guidance, and Transportation Asset Management Plan Consistency Determination Interim Guidance. These documents provide implementation guidance on provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Asset Management Final Rule, which requires a State department of transportation (State DOT) to develop and implement a risk-based asset management plan. Under these authorities, FHWA must certify that Transportation Asset Management Plan (TAMP) development processes established by a State DOT meet applicable requirements, and make an annual consistency determination, evaluating whether a State DOT has developed and implemented a State-approved TAMP that meets all applicable requirements. This notice finalizes the Transportation Asset Management Plan Development Processes Certification and Recertification Guidance, issues interim guidance on transportation asset management plan consistency determinations, and summarizes the comments received on the drafts of both guidance documents, FHWA's

response to those comments, and any changes that were made to the guidance documents issued with this notice.

FOR FURTHER INFORMATION CONTACT: For questions about this notice contact Mr. Stephen Gaj, FHWA Office of Infrastructure, (202) 366-1336, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590, or via email at Stephen.Gaj@dot.gov. For legal questions, please contact Ms. Janet Myers, FHWA Office of the Chief Counsel, (202) 366-2019, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001, or via email at Janet.Myers@dot.gov. Business hours for FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Copies of the proposed Transportation Asset Management Plan Development Processes Certification and Recertification Guidance; and Transportation Asset Management Plan Consistency Determination Interim Guidance are available online for download and public inspection online under the docket at the Federal eRulemaking portal at: <http://www.regulations.gov>. An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at: http://www.archives.gov/federal_register and the Government Publishing Office's Web page at: <https://www.gpo.gov/fdsys/>.

Background

Under the asset management provisions enacted in MAP-21, codified at 23 U.S.C. 119, State DOTs must develop and implement a risk-based TAMP. This TAMP

must include all National Highway System (NHS) pavements and bridges, regardless of whether the State or some other entity owns the relevant NHS facility.

The FHWA Division Offices (Divisions) must take two actions with respect to State DOT asset management activities. The first is TAMP development process certification/recertification. Under 23 U.S.C. 119(e)(6), FHWA must certify at least every 4 years that the State DOT's processes for developing its TAMP are consistent with applicable requirements. The FHWA also must recertify whenever the State amends its TAMP development processes, in accordance with 23 CFR 515.13(c). The Transportation Asset Management Plan Development Processes Certification and Recertification Guidance (Development Processes Certification Guidance) provides a framework for Divisions to undertake and complete this process certification. The second FHWA action, under 23 U.S.C. 119(e)(5), is an annual consistency determination, which evaluates whether the State DOT has developed and implemented a TAMP that is consistent with the requirements of 23 U.S.C. 119. The Transportation Asset Management Plan Consistency Determination Interim Guidance (Consistency Determination Interim Guidance) assists Divisions on evaluating whether a State DOT has developed and implemented its TAMP in accordance with provisions in 23 CFR 515.13(b). Note that best practices in guidance may be revised as the state of asset management practices advance and the asset management rule is further implemented.

Draft versions of guidance were made available for public review and comment June 6, 2017, at 82 FR 25905. The FHWA received seven comment letters from the following organizations: Alaska Department of Transportation and Public Facilities, Georgia DOT, Maryland DOT, Michigan DOT, New Jersey DOT, Wyoming DOT, and

joint comments from the DOTs of Idaho, Montana, New York, North Dakota, South Dakota, and Wyoming. A summary of the comments received and FHWA's response, including any changes made in response to comments, is provided below.

Based on the comments received, as well as FHWA's experience to date as it implements the certification and consistency determination requirements, FHWA concluded it is appropriate to issue final certification guidance. However, FHWA believes that issues that may affect FHWA consistency determinations are less well-defined at this time. Accordingly, FHWA is issuing the guidance on consistency determinations as interim guidance, with the expectation of finalizing that guidance later in 2018.

Concern that the guidance would impose new requirements

Several commenters (Alaska, Wyoming, and the joint commenters) expressed concern that these guidance documents would impose new requirements without undergoing the required notice and comment procedures. In response to these concerns, FHWA notes that the guidance does not impose any new requirements. Any requirements discussed in the guidance are imposed by existing statute or regulation, and those requirements can be changed only by revising these underlying authorities. Recommended best practices are clearly described as not required, and may be revised as practices advance and asset management is further implemented. The FHWA revised the introduction of both documents to clarify this point.

TAMP consistency determination requirements

Alaska asked for more information on the factors that Divisions will use to determine that State DOT funding allocations are “reasonably consistent” with 23 U.S.C. 119. Under that section, the Secretary must determine annually that a State has developed and implemented an acceptable TAMP. As indicated in 23 CFR 515.13(b)(2), each State DOT may determine the most suitable approach for demonstrating implementation of its TAMP, so long as the information is current, documented, and verifiable. The FHWA considers the best evidence of plan implementation to be that, for the 12 months preceding the consistency determination, the State DOT funding allocations are reasonably consistent with the investment strategies in the State DOT’s TAMP. This demonstration takes into account the alignment between the actual and planned levels of investment for various work types (*i.e.*, initial construction, maintenance, preservation, rehabilitation, and reconstruction (CFR 515.13(b)(2)(i))). The FHWA believes the draft guidance (page 2, third paragraph) discussion of “reasonably consistent” is sufficiently detailed to inform FHWA Divisions and stakeholders about this issue.

Alaska also asked for more information about how the Division will communicate its consistency determination to the State DOT. As provided in 23 CFR 515.13(b), FHWA will notify the State DOT, in writing, whether the State DOT has developed and implemented a TAMP consistent with applicable requirements. The FHWA does not believe it is necessary to further specify how the notice is delivered to the State DOT.

Declining targets and asset conditions

Joint commenters and Wyoming noted that the performance management regulations in 23 CFR part 490 allow a State DOT to adopt targets for NHS bridge and pavement conditions that reflect conditions that decline at faster rates than previously was the case. The FHWA recognizes that, due to the fiscal conditions and the need for trade-offs across assets, conditions of an asset may improve, stay constant, or decline. In response to this comment, FHWA added clarifying language to the Consistency Determination Interim Guidance regarding such declining targets and asset conditions. However, the State DOT should explain in its TAMP how these improvements or declines affect long-term goals of achieving and sustaining a state of good repair. The TAMP investment strategies must, during the life of the long-term TAMP, be designed to support or make progress toward (1) achieving and sustaining a desired state of good repair over the life cycle of the assets, (2) improving or preserving the condition of the assets and the performance of the NHS relating to physical assets, and (3) achieving the national goals identified in 23 U.S.C. 150(b).

Relationship between TAMP and existing transportation planning processes

Michigan asked for clarification on the relationship between existing transportation processes and TAMP requirements, specifically on page 20 of the draft Development Processes Certification Guidance. The requirement to integrate the State-approved TAMP into the transportation planning process calls for consideration of TAMP information and investment strategies when making programming and project selection decisions during transportation planning. The asset management rule, at 23 CFR 515.9(h), clearly describes the interaction between the TAMP and STIP: “the State

DOT must integrate its TAMP into the State DOT's planning processes that lead to the STIP, to support the State DOT's efforts to achieve the goals in 23 CFR 515.9(f).” The FHWA encourages (but does not require) that such integration extend to including, in the STIP performance management target achievement discussion under 23 CFR 450.218(q), information about how TAMP investment strategies have been used when programming projects into the STIP. In contrast, the draft Development Processes Certification Guidance addresses the appropriate role of STIPs when State DOTs are developing their TAMPs.

The statement noted by the commenter does not contradict 23 CFR 515.9(h). The TAMPs are the product of analyses and data requirements that do not necessarily apply to other documents, such as STIPs. The guidance emphasizes the long-term nature of the TAMP. A short-term program, like the STIP, should be used only as background information given this difference in relevant time periods. For example, hard coding STIP projects into Bridge Management Systems to impact development of investment strategies for bridge assets is not considered the use of STIP as background information. However, if a major project with significant amount of funding is delayed for some reason, then the State DOT needs to determine if this delay could have any impact on their TAMP and if so, whether the impact is significant enough to require an update. For these reasons, importing a STIP directly into a TAMP as a substitute for TAMP analysis and investment decision-making does not fulfill TAMP requirements. The FHWA concluded no change is needed to the Development Processes Certification Guidance.

TAMP Life Cycle Planning (LCP) process and modeling requirements

Georgia asked for clarification on the extent and detail it should include in its TAMP submission regarding the LCP process and modeling. In response, FHWA clarifies that States do not need to include their deterioration models in detail in their TAMPs. However, the deterioration models are required to perform the required analysis, and a State DOT must identify the model(s) that are part of the State DOT's process for developing its TAMP. The State DOTs should include, as part of their process description, an explanation of how the selected model(s) provide insight into LCP, and why a certain type of management strategy is the most appropriate strategy at the time of TAMP development.

The asset management rule does not specifically require State DOTs to break assets into sub-groups; however, asset inventories normally break assets into sub-groups (for example a pavement inventory distinguishes between asphalt and concrete pavements), including appropriate condition data for each asset sub-group that are used to predict how each sub-group deteriorates. The State DOTs typically have agency-specific deterioration curves for different pavement types and components/elements of bridges by bridge type. The FHWA believes the Consistency Determination Interim Guidance, the interim document "Using a Life Cycle Planning Process to Support Asset Management," and the final asset management rule adequately cover this information. No change was made to the guidance.

Update or amendment of TAMPs

Georgia and Maryland requested clarification on the TAMP update and amendment timelines. The State DOTs must update or amend TAMPs at least every 4

years (23 CFR 515.13(c)). The State DOTs are otherwise free to update or amend plans whenever such revision is warranted.¹ The FHWA will consider annually the most recent TAMP submitted by the State DOT, along with any separate documentation submitted by the State DOT to demonstrate implementation of the plan. Thus, the State DOT should consider updating its plan whenever there is a change that has material impact on the accuracy and validity of the processes, analyses, or investment strategies in the plan. If the State DOT amends its TAMP, including any amendments to TAMP development processes, the State DOT must submit the amended document to FHWA for review. The FHWA will make the applicable determination(s) (a new process certification, consistency determination, or both). The State DOT must make such submissions at least 30 days prior to the deadline for the next FHWA consistency determination, except in the case of non-material revisions as defined in 23 CFR 515.13(c). The FHWA believes the Consistency Determination Interim Guidance and the final asset management rule adequately cover this information; thus, no change was made to the guidance.

Initial TAMP requirements

Michigan and Maryland requested further information on the requirements for the initial TAMP. The initial TAMP must include a description of all the required TAMP development processes described in 23 CFR 515.7. The scope of this requirement includes policies, procedures, documentation, and an implementation approach that satisfy the requirements of 23 CFR part 515. The FHWA process certification is based

¹ Note that there are provisions in 23 CFR part 490 that affect the timing and procedures for amending 23 U.S.C. 150(d) targets.

on those aspects of the initial TAMP. Separate from the information required for the TAMP development process certification, there are requirements for additional types of information in the initial TAMP. Those requirements are discussed in Question and Answer #1 in FHWA's "Asset Management Initial Plan Guidance," available on FHWA's Asset Management Web page (Initial TAMP Q&A #1), at <https://www.fhwa.dot.gov/asset/>.

Specifically, Maryland asserts that the Development Processes Certification Guidance contains requirements for the initial plans that falls outside the scope of the asset management rule. The FHWA does not agree with the commenter's interpretation. Section 515.11(b) of the rule establishes flexibility for State DOTs, when preparing their initial TAMPs, to deviate in certain respects from 23 CFR 515.7 and 515.9 requirements by eliminating certain analyses from the plans. In response to the comment, FHWA added language to the Development Processes Certification Guidance clarifying that (1) certification of the State DOT's TAMP development processes is based on meeting the process requirements described in 23 CFR 515.7; and (2) the initial TAMP must provide all the information specified in 23 CFR 515.7 and 515.9, except the analyses in the three areas listed as exclusions under 515.11(b). For a detailed discussion of the initial TAMP requirements, see Initial TAMP Q&A #1, discussed above.

Further, Michigan requested that FHWA add a list of processes required for the initial TAMP to the Development Processes Certification Guidance. Because this information goes beyond the scope of the guidance documents that are the subject of this notice, FHWA did not revise the documents based on this comment. The requested information appears in the Initial TAMP Q&A #1, discussed above.

Performance gap analysis

Georgia and Michigan requested clarification on how to conduct the performance gap analysis, particularly, whether to use current asset condition targets given that the targets required under 23 U.S.C. 150(d) are not due until May 20, 2018.

In response to the commenter's specific questions about the use of targets in initial TAMPs, pursuant to 23 CFR 515.11(b), State DOTs are not required to include 23 U.S.C. 150(d) targets in the Initial TAMPs because the deadline for setting those targets is less than 6 months before the deadline for submission of the initial TAMP on April 30, 2018. However, FHWA encourages (but does not require) State DOTs that have performance targets, whether developed to meet 23 U.S.C. 150(d) requirements or for other reasons, to include those targets if possible. This will provide the State DOT with more experience in analysis and implementation. A State DOT that includes targets can test the effectiveness of its proposed TAMP development processes. The State DOTs may wish to establish "temporary targets" for use in the initial TAMP. For example, State DOTs may use the minimum condition requirements for NHS bridges and Interstate pavements, as established under 23 CFR part 490. Also, States are encouraged to set targets for non-Interstate pavements to get full coverage for NHS pavements. The State DOT can use various sources of information for temporary targets, such as strategic plans and other State plans.

As discussed above, State DOT may amend its TAMP at any time to add section 150(d) targets, or to revise or remove any other targets. Procedures applicable to TAMP

amendments appear in 23 CFR 515.13(c). Note, however, that 23 CFR part 490 contains separate procedures that govern the amendment of part 490 targets.

The FHWA believes this information is adequately addressed in the guidance, the final asset management rule, and FHWA's "Asset Management Initial Plan Guidance," available on FHWA's Asset Management Web page, at <https://www.fhwa.dot.gov/asset/>.

Michigan noted that the examples of good practices for the performance gap analysis would be better suited for the portion of the Development Processes Certification Guidance entitled "Process for Ensuring Use of Best Available Data and Use of Bridge and Pavement Management Systems" on page 20. The FHWA agrees, and revised the final guidance as suggested.

Long-term Targets, Vision, and State of Good Repair (SOGR)

Michigan and Georgia requested additional guidance on the role of long-term targets and the State DOT's long-term vision. Michigan commented that the Consistency Determination Guidance should be expanded to clarify how the long-term vision under the performance gap analysis should fit with other TAMP requirements. Michigan is concerned that Federal and some States' performance management pavement categories may not be in alignment, and that the 10-year period for the financial plan may not align with time periods some States use for asset management.

In response to the comments concerning the use of "long-term targets" and "long-term vision," FHWA notes that neither the rule, nor the Development Processes Certification Guidance, specifically requires the State DOT's performance gap process to include identification of long-term targets. However, it is good practice for a State

DOT's performance gap process to include identification of long-term targets and performance goals. The purpose of the TAMP is to achieve or maintain the State DOT's desired SOGR, which is a long-term goal and typically will look forward more than 10 years. Identification of long-term targets is inherent in defining SOGR.

Each State DOT is required to define asset management objectives and SOGR for itself. The asset management objectives of the State DOT's TAMP should align with the State DOT's mission. The objectives must be consistent with the purpose of asset management, which is to achieve and sustain the desired SOGR over the life cycle of the assets at minimum practicable cost (23 CFR 515.9(d)(1)). In fact, to achieve this goal, the performance gap, life-cycle plan, and risk management analyses should cover periods longer than 10 years. For example, life cycle plans for bridges may cover a period of 70-100 years; however, the TAMP must include the information that covers the immediate next 10 years, not the entire 70-100 years (*see* 23 CFR 515.9(e)). The minimum 10-year period was established to acknowledge the uncertainty surrounding the validity of the assumptions that State DOTs must make to conduct analyses for periods longer than 10 years. The FHWA concluded the draft Development Processes Certification Guidance already reflects this link between the State DOT's long-term vision for SOGR and the TAMP process for performance gap analysis. No change was made in response to this comment.

Michigan specifically noted that it uses freeway and non-freeway categories for its long-term vision, rather than Interstate and NHS (excluding the Interstate) categories. The State DOT TAMPs must specifically address the Interstate and NHS (excluding the Interstate) as required under the performance management and asset management rules.

State DOTs have flexibility in how they make the needed adjustments. For example, if the State DOT is managing all its freeways and the Interstate the same way, with the same SOGR goals, the State DOT should explain this in its asset management plan. No change was made in response to this comment.

Michigan also asked how it should treat assets other than NHS pavements and bridges in its long-term vision, specifically, whether it could include other assets without making those other assets subject to all TAMP requirements. If the State DOT wants to address other assets without subjecting those assets to section 515.7 or 515.9(l) analyses, the State DOT can group such assets and identify them as assets outside the TAMP (*e.g.*, "other assets," "non-TAMP assets", "other safety related assets," etc.). A State DOT may identify these other types of assets with its respective funding needs in a separate table or general discussion, but must clearly note that the TAMP framework was not used to arrive at the estimated funding needs/allocations for those non-TAMP assets. This issue is addressed in Question #11 of FHWA's "Asset Management Initial Plan Guidance," available on FHWA's Asset Management Web page, at <https://www.fhwa.dot.gov/asset/>. In response to this comment, FHWA added information to the Consistency Determination Interim Guidance.

Deviation from the TAMP under extenuating circumstances

Michigan asked FHWA for clarification or examples of "extenuating circumstances" that would allow a State to deviate from its TAMP investment strategies, pursuant to 23 CFR 515.13(b)(2)(ii). In response to these comments, FHWA revised the Consistency Determination Interim Guidance, to better describe the case-by-case,

extenuating circumstances determination and the information that the State DOT should provide to support deviation from the TAMP.

The FHWA may find that a State DOT has implemented its TAMP even if the State DOT has deviated from the TAMP investment strategies (23 CFR 515.13(b)(2)(ii)). To support such finding, the State DOT's deviation from its TAMP investment strategies must be the result of circumstances beyond its reasonable control. If major changes in available funding or program costs are due to natural disasters or third party (non-State) actions, those circumstances likely will qualify.² Circumstances caused by State action outside the State DOT, such as major State funding changes or changes in State program priorities due to State legislative or executive leadership action, may qualify as extenuating circumstances if the State DOT shows it was unable to either prevent those changes, or to offset their effects on achievement of the TAMP investment strategies. Changes in plans or priorities produced solely as a result of the transportation planning process would not typically be considered extenuating circumstances due to the State DOT's role in transportation planning and the regulatory requirements that call for integration of the TAMP into the transportation planning process.

If the State believes extenuating circumstances apply, it should provide an explanation of the extenuating circumstances, the impacts, the State DOT's efforts to avoid or offset the changes and impacts, and program changes that will be undertaken to account for the changed conditions. In addition, State DOT should consider updating or amending its TAMPs whenever there is a material impact on the accuracy and validity of

² In the asset management final rule preamble (81 FR 73245), FHWA provided the following example of extenuating circumstances: a sudden increase in material prices that has an impact on delivery of the entire program, forcing the State DOT to divert more funds to projects already underway.

the processes, analysis, or investment strategies in the plan. Updates and other amendments may require FHWA review (*see* 23 CFR 515.13(c)).

Best available data

New Jersey asked whether State DOTs could use adjusted historical data to analyze NHS bridge and pavement conditions. The State DOT must use the best available data (23 CFR 515.7(g)). If changes are made to historic data, the State DOT needs to explain what it has done, and why the State DOT believes that the quality of the historic data is improved by the changes. However, any changes in historical data will not be used to revise reporting submitted pursuant to 23 U.S.C. 150(e) or to change determinations made under 23 U.S.C. 119(e)(7) or 119(f). No change was made to either document based on this comment.

AUTHORITY: 23 U.S.C. 119; 23 CFR part 515; 49 CFR 1.85.

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Brandye L. Hendrickson,
Acting Administrator,
Federal Highway Administration.

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